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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 3102 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge ? YES

M/S.GUJARAT AMBUJA PROTEINS LIMITED

Versus

DAHYABHAI KALUBHAI SOLANKI

Appearance:

MR PM THAKKAR for Petitioners

MR YS LAKHANI for Respondent No. 1

MR UA TRIVEDI,APP for Respondent No. 2

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 09/01/97

ORAL JUDGEMENT

Petitioners by this Misc.Criminal Application

under section 482 of the Criminal Procedure Code, 1973, have moved this court inter alia praying for quashing and setting aside the order dated 17-8-1991 passed by the learned JMFC Kadi, in Criminal Case No. 579/90, revoking the earlier order of granting exemption to the accused and issuing non bailable warrants against them.

2. To state few relevant facts :- Respondent No.1 Dahyabhai Kalubhai Solanki, Assistant Law officer, Gujarat Pollution Control Board, Ahmedabad, filed a complaint on 21-4-1990 before the learned JMFC Kadi against M/s Gujarat Ambuja Proteins Ltd., situated at Kadi, interalia alleging that (i) the accused-factory had no facility - no plant to purify the polluted water; (ii) that the polluted water in turn was discharged in the open land situated nearby; and (iii) that though the application made by the complainant under section 24 of the Water (Prevention and Control) Act, 1974 (for short"The Act") for the consent of the Board stood refused, still in defiance of the the provisions of the Act, the complainant and its partners had committed the alleged offences punishable under sections 24, 25, 43, 44 and 47 of the Act. On the basis of these allegations, the process came to be issued against the petitioner-accused. Thereafter the matter went on merrily adjourned from date to date on one ground or the other for about 15 times consuming 16 months, progressing not an inch further ! This was like calling out names from the muster-roll to mark presence or absence as of the students in class-room. From the Rojkam it also appears that the complainant had remained absent on many occasions !! This also prima-facie once again speaks about on the the one hand lethargy of the court in expeditiously disposing of the criminal cases and that too under the most important Act like Pollution Act, and on the other hand unduly liberal attitude in enforcing the presence of the parties and recording the evidence. This also as well speaks about the complicity of the complainant and his learned PP in not keeping the witnesses present and get them examined. One should not forget that the cases under the Pollution Act are invariably and unpardonably required to be given top-most priority and should not be lightly adjourned till of course the case for the same is made out absolutely and the learned Magistrate passing speaking orders giving sufficient reasons for the same. Not to do so, is prima-facie nothing, but can be treated as misconduct on the part of the complainant and the court as well in absence of just and proper explanation. As a matter of fact, it was the prime duty of the complainant to volunteer himself before the court entering the

witness-box to get himself examined and it was equally foremost duty of the learned Magistrate to record the evidence of the complainant at the earliest best, because he being the public servant on the next appointed date, may, may not be present because he has to file number of such other cases in other courts and as some other important work also and essentially so because this was a pollution case. In such cases the learned Magistrate is required to follow the procedure as laid down in sections 244 and 245 of the Code.

3. According to the learned APP, the petitioners have made and application at Ex.4. on 15-4-1990 under sections 205 and 317 of the Code praying for exemption from appearing before the court. This was heard and decided by the learned Magistrate on 26-11-1990, whereby the same came to be allowed and the petitioners were exempted till further directions, directing them to remain present before the court as and when required. It is indeed strange and shocking that such a small application to be heard and decided took more than seven months !! For other eight months case went in cold storage as thereafter it further appears that the learned Magistrate by an order dated 17-8-1991 cancelling the earlier order granting exemption, issued non-bailable warrants on the ground that the case has become pretty old and in absence of the accused the trial was not proceeding further giving rise to the present Misc. Criminal Application.

4. Heard learned advocate appearing for the petitioners and Mr. U.A.Trivedi, the learned APP . Mr. Y. S. Lakhani, the learned advocate for the respondent no.1 was absent when the matter was called out yesterday and even today. According to the learned advocate for the petitioners, the order of the learned Magistrate issuing non-bailable warrant was ex-facie illegal as the very same learned Magistrate had earlier granted exemption, and in case if for whatever reasons the presence of the accused was necessary before the court, simple summons could have been issued and only in case the same was not responded to, the learned Magistrate would have been justified in issuing a non-bailable warrant-the last remedy of the court- with no other course to secure presence of the accused before the court.

5. On seeing the earlier order dated 26-11-1990 and the impugned order dated 17-6-1991 issuing non-bailable warrant, it is very clear that the learned advocate appearing for the petitioner to some extent, is indeed

quite right in making his submission that in view of the earlier order, the subsequent order ought not to have been passed in hot-haste without hearing them.But then in that case, once the learned advocate representing the accused is informed about the next date on which the accused is supposed to remain present before the court, it is not necessary for the learned Magistrate to issue fresh notice to the accused. In fact. in such cases , in the first instance, it is the duty of the learned advocates appearing for the accused to inform the accused to remain present before the court, on the next date given by the court. It is only when the learned advocate informs the court about either accused was not responding to his letter or otherwise, unable to keep him present, that the court must issue fresh notice or appropriate warrants against the accused for remaining present before the court. This must be reflected in the Rojkam proceedings.Indisputably, the learned Magistrate in his earlier order dated 26-11-1990 had granted conditional exemption to the accused till further orders by the court to remain present before the court. There is nothing to show that the learned advocate for the accused was informed to keep the accused present before the court on the next date. In this view of the matter, if the learned Magistrate felt the presence of the petitioner-accused necessary to proceed with the trial, he in the first instance ought to have told the learned advocate for the accused to keep him present before the court and thereafter in the event of necessity ought to have issued ordinary summons to them, and/or appropriate order of warrants. Infact, ordinarily, when the trial proceeds the evidence is required to be recorded in presence of the accused. As a matter of fact, while recording the further statement of the accused under section 313 of the Code, first question which is invariably put to him is "the evidence is recorded in your presence. What you have to say regarding the same ? " Under the circumstances, if the evidence is recorded at the back of the accused, the accused taking up a contention that he was prejudiced and accordingly the trial was void. In this view of the matter, no accused can be permitted to have double standard of blowing hot and cold by praying on the one hand exemption and on the other hand alleging that the evidence was recorded in his absence. There is no doubt that the accused has every right not to be unnecessarily harassed when the evidence is not to be recorded, but at the same time, when his presence in the court is necessary at the time of recording the evidence, that exemption can not be permitted save and except at the cost of forfeiting his right of evidence being recorded in his presence. The

alleged offence against the accused being a warrant triable case instituted otherwise then on police report is governed by section 244 onwards. Section 244 of the Act is clear enough to indicate that in a warrant triable case instituted otherwise on a police report, the learned Magistrate shall proceed to hear, examine and take all such evidence as may be produced in support of the prosecution etc.etc. Not only that but section 245 of the Code makes a further provision that as to when the accused shall be discharged. As per section 245 if the learned Magistrate considers for the reasons to be recorded that no case against the accused has been made out, the learned Magistrate shall discharge him. Under such circumstances, the presence of the accused at the time of recording of the evidence unless he wants to voluntarily forego his right to remain present before the court, can not be dispensed with. The reason is when the charge is framed, he is required to answer whether he pleads guilty or not, and for this also his presence is absolutely necessary.

6. The learned Magistrate was quite right while passing the impugned order when he observed that the case in question was old one. But then if such cases get unnecessarily protracted, it sadly reflects upon the learned Magistrate as a person having no concern for offences under the Pollution Act. The cases under the Air or Water Pollution Act can not be permitted to be lingered and lingered on at the whims and caprice of the factory owners who pollute air and water to the greatest detriment of the public interests. In case if the trial courts are relaxed as found in the instant case and do not efficiently and expeditiously conduct the trial, (but for some special and adequate reasons) the time has come that they must be held personally accountable and remarks be kept in confidential file unless he gives just, proper and reasonable explanation to this court. None can afford to forget that the Pollution is a monster sitting right on the chest of the public life, sucking the lives of human beings, animals, birds, plants-all sorts of global existence which depend for survival/flourish and prosper upon unpolluted air and water. In this view of the matter, proceedings of such types can not be permitted to be protracted,and no learned Magistrate/authorities can be party to delay unless itself want to get arraigned for helping accused for offences under the Pollution Act. As a matter of fact, the prosecution under the Pollution Act must be given utmost and "A" priority from day to day. This is the only way whereby the Pollution Law can be made meaningful, its objects realised and public is spared

from the agony of contaminated atmosphere created by air and water pollution. Infact, this court has given exhaustive directions to the trial courts in its judgment rendered in the case of G.W.P.C.B. VS Kohinoor D.& P. Works, reported in 34 (19993) 2, GLR, 1366 (Page-1392) as to how the criminal cases under the Pollution Act should be conducted and it appears from this case that no attention has been paid to the said judgment. This is too serious ! The Registrar is directed to call for an explanation of the concerned learned Magistrate in not following the guidelines enumerated in the aforesaid judgment on or before 1-5-1997, and be placed before the Hon'ble Unit Judge and thereafter Hon'ble Chief Justice.

7. In view of the aforesaid discussion, since this court has already stayed the execution of the non-bailable warrant, and further since now the learned advocate appearing for the petitioners have assured this court that the petitioners shall voluntarily remain present before the trial court on 23-1-1997.The learned Magistrate is accordingly directed to proceed with the trial.. On that day, the complainant shall also remain present before the court and give his evidence.The learned Magistrate shall hear and decide the case giving it top-most priority preferably on or before 3o-6-1997. Any non-comnpliance of this order by the learned Magistrate will be viewed very seriously.In this regards, the learned Magistrate is specifically directed to inform this court that the case has been disposed of on or before 30-6-1996, as directed above.

8. In the result, this petition fails and is dismissed. The impugned order issuing non-bailable warrant is quashed and set aside.Ad-interim relief granted earlier to continue till 23-1-1997. Rule discharged. The learned advocates for the respective parties are directed to inform their respective clients to remain present before the trial court on 23-1-1997.

9. The office is directed to forward a copy of this judgment to all the criminal courts taking up pollution matters impressing upon them to give a top-most priority in dealing with the same and will decide the same as expeditiously as possible preferably within six months from the date of filing of the complaint. With a view to see that the notices on the accused are duly served, the learned Magistrate shall affix a copy of the same on the notice board and a copy of the same shall be given to the complainant to be served on the accused, and in the event

of any difficulty, he shall take assistance of the police officer of the concerned area and will serve the same in time. Any slackness on the part of the complainant in this regard shall be viewed seriously and will amount to the contempt of the court.

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